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by the ECF system

Hon. Denise L. Cote, U.S.D.J.
Senator Patrick Moynihan Federal Courthouse
500 Pearl Street, Courtroom 15B
New York, New York 10007

Re: *Knopf v. Esposito*, 17 Civ. 5833 (DLC) (SN)

Your Honor:

In reviewing your latest order of today, and the immediately prior filings, it appears that the Court's view is that I should have said that Mr. Sanford, "effectively declined my request that he accept service of the subpoena by failing to respond to that request." I appreciate that I should have been more precise. I will also point out that lawyers (and judges) frequently use the term "decline" as synonymous with a failure to respond to an invitation or offer within a reasonable time, as Mr. Sanford has done here. *See*:

AOM Group, LLC v. Wachovia Mortg., FSB, 2010 WL 4715968,*2 (D. Ariz., Nov. 15, 2010) ("Moreover, we note that plaintiff declined its opportunity to challenge the reasonableness of defendants' attorneys fees by failing to respond.")

Parker v. Board of County Com's of Shawnee County, Kansas, 2002 WL 31527763, *2 (D. Kans., Nov. 5, 2002) (. . . [B]y failing to respond to the instant Motion, Defendant declined the opportunity to challenge both the grant and the amount of the statutory award.")

McCall v. Shock, 2002 WL 31527763, *2 (E.D. Ark. April 1, 2015) ("Moreover, by failing to respond to the current Motion, Plaintiff has declined to elaborate as to his intentions.")

The search — adv: declined /20 "failing #to respond" — in Westlaw's All Federal + All State database turns up approximately 30 similar examples. While there was no intention to mislead the Court, I do understand the need for greater precision, and accordingly apologize to both the Court and Mr. Sanford.

Thank you for your attention to this matter

Respectfully submitted,
/s/ Eric W. Berry

Eric W. Berry
all counsel (by ECF, Mr. Sanford and Ms. Nadel (by email))